

STATE OF SOUTH DAKOTA



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November 3, 2025

Ashley Rentsch
City of Brookings Finance Director
520 3rd Street Ste 130
Brookings, SD 57006

OFFICIAL OPINION No. 25-04

Re: Official Opinion Concerning Legality of Selling THC-Infused Beverages or Products in a Municipally-Owned Liquor Store

Dear Ms. Rentsch,

In your capacity as the Finance Director for the City of Brookings, you have requested an official opinion from the Attorney General's Office based on the following question:

QUESTION:

Can a municipally-owned liquor store sell THC-infused drinks or other THC-infused products under South Dakota law? If so, what specific concentrations or chemical processes are allowed?

ANSWER:

The legality of the sale of THC-infused and hemp-derived products is fact-specific and depends on the type of hemp derivative used, its concentration, the extraction method from the cannabis plant, and how the derivative was prepared. Currently the Legislature has declared it illegal to sell all synthetic cannabinoids, to sell naturally-occurring cannabinoids with more than 0.3% Delta-9 THC, and to sell industrial

hemp or industrial hemp products that contain chemically-derived, chemically-modified, or chemically-converted cannabinoids.

FACTS:

The City of Brookings owns and operates a liquor store. As Finance Director for the City of Brookings, you oversee the liquor store. You have observed an opportunity to sell THC-infused beverages and do not want to deprive the city of a potential revenue stream. However, you are concerned that selling THC-infused beverages and products is illegal. You have indicated you have been unable to receive clear guidance from various state agencies including the Department of Health and Department of Revenue.

IN RE YOUR QUESTION:

Since the late 2010's, the consumables market has been flooded with hemp-based and hemp-derived products. As you stated in your request, this widespread availability suggests that these products are legal. But "[t]he only thing that is clear at this point" is that "the marketing of and enthusiasm for them has gone way ahead of the science." Dr. Peter Grinspoon, M.D., *CBD Products are Everywhere. But Do They Work?*, Harvard Health Publishing, (2024).¹ At the outset, these "products aren't standardized and will vary." *Id.* On top of that, marketing schemes add to the confusion of the products' effectiveness and legality by using "egregious and unfounded claims" to market these products. *Id.* Worse yet, "laboratory testing also shows that many products don't contain what's claimed on the label." *Id.* You are right to question the city's entry into this corner of the market. Addressing your question requires a look at what these products are, and how the laws have changed over recent years.

Both marijuana and hemp come from the cannabis plant. SDCL 22-42-1(7) (defining "marijuana" as "all parts of any plant of the genus cannabis. . ."); SDCL 38-35-1(5) (defining "hemp" as "the plant Cannabis sativa L. . ."). The definition of hemp embraces several parts of the Cannabis sativa L. plant, like seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers . . ." SDCL 38-35-1(5). There are more than sixty "cannabinoid compounds. . . ." Serrin Atakan, *Cannabis, a complex plant: different*

¹ Available at: <https://www.health.harvard.edu/staying-healthy/cbd-products-are-everywhere-but-do-they-work> (last visited October 26, 2025).

compounds and different effects on individuals, Ther. Adv. Psychopharmacol, Dec. 2012, 241-254.² “The two most well-known types of cannabinoids are tetrahydrocannabinol (THC) and the non-psychoactive cannabidiol (CBD).” Cannabis Law Deskbook, 24:3: *Practical differences*, pg. 694-95 (Bernstien et al. eds., 2021-2022). Both THC and CBD occur naturally and can be synthetically manufactured. See SDCL 34-20B-14(47) (listing synthetic cannabinoids as a Schedule I controlled substance when they are not listed in another controlled substances schedule, not an FDA-approved drug, and contain any quantity of various specifically listed substances).

Prior to 2018, it was illegal to possess, sell, or distribute all cannabis, including Delta-9 THC and its concentrations, under South Dakota and federal law. Since the passage of the 2018 Farm Bill, “hemp is increasingly being grown for its cannabinoid content . . .” Cannabis Law Deskbook, 24:3: *Practical differences*, pg. 695. “CBD products are primarily produced by extracting or concentrating the CBD from the cannabis flower.” Cannabis Law Deskbook, 25:5: *Cannabidiol*, pg. 716. Along with using CBD in products, companies are “converting CBD into Delta-8 THC” and the other derivatives, like Delta-10 THC and THC-O. Cannabis Law Deskbook, 25:11 *Regulatory challenge of new hemp products—Delta-8 THC and other cannabinoids*, pg. 729. CBD is converted into these THC derivatives by using acids or alcohols to change the chemical structure of the CBD. Patricia Golombek, Maro Muller, Ines Barthlott, Constanze Sproll, & Dirk W. Lachenmeier, *Conversion of Cannabidiol (CBD) into Psychotropic Cannabinoids Including Tetrahydrocannabinol (THC): A Controversy in the Scientific Literature* (published June 3, 2020).³

The evolution of these conversion processes and passage of these laws have resulted in the prevalence you see on shelves today: both natural and synthetic CBD- and THC-infused products widely available. Our communities have witnessed an explosion of products on the market, “including CBD concentrates and extracts, CBD vape products, CBD topicals (applied to hair or skin), CBD beverages, and CBD edibles (candies, gummies).” Cannabis Law

² Available at:

https://pmc.ncbi.nlm.nih.gov/articles/PMC3736954/pdf/10.1177_2045125312457586.pdf (last visited October 20, 2025).

³ Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC7357058/> (last visited October 20, 2025).

Deskbook, 25:5: *Cannabidiol*, pg. 716. These CBD products “are sold through a variety of retailers including direct-to-consumer online sales, grocery stores, gas stations, farmers’ markets, and large retailers.” *Id.* Given the burst of hemp-derived products on the market and the overlap between those products and marijuana products, the Legislature has worked to ease the confusion.

Regarding hemp, the Legislature has specified “[n]o unlicensed person is subject to criminal penalties for possession or distribution of hemp seed.” SDCL 38-35-2. In contrast, the Legislature made it illegal to sell or use industrial hemp for smoking or inhaling. SDCL 38-35-21.

Regarding cannabinoids in the hemp plant, the Legislature excluded naturally-occurring CBD, occurring without the use of a chemical catalyst, as well as non-psychoactive cannabinoids and topical cream CBD, from the definition of chemically-derived cannabinoids. SDCL 38-35-1(3). The Legislature also excluded hemp-derived Delta-9 THC with a concentration of less than 0.3% from the definition of marijuana. SDCL 22-42-1(7). That said, the Legislature made a host of cannabinoids and their variations illegal.

First, manufacturing, distributing, possessing, or selling products with a Delta-9 THC content of more than 0.3% is illegal unless done under the strict guidelines of the Medical Cannabis Program. That is because Delta-9 THC above that 0.3% threshold is a Schedule I controlled substance that is illegal for all persons, except those with a valid medical marijuana card from the Department of Health. SDCL 22-42-1(7); SDCL 34-20B-14 (20).

Second, the Legislature criminalized the sale or distribution of products that contain Delta-8 THC, THC-O, or hexahydrocannabinol (“HHC”) to people under twenty-one years old. SDCL 34-20B-117. Last year, the Legislature also made it illegal to “chemically modify or convert industrial hemp . . . or engage in any process that converts” CBD into Delta-8 THC, Delta-9 THC, Delta-10 THC, “or any other tetrahydrocannabinol isomer, analog, or derivative[.]” SDCL 34-20B-118. In line with that move, the Legislature explicitly removed Delta-8 THC, Delta-10 THC, THC-O, HHC, and THCP [tetrahydrocannabiphorol] from the definition of authorized “industrial hemp product[s].” SDCL 38-35-1(7)(a)-(e).

Central to your concern, the Legislature made it illegal, regardless of the person receiving the product, to “sell or distribute industrial hemp or an industrial hemp product that contains chemically derived cannabinoids or cannabinoids created by chemically modifying or converting a hemp extract.”

SDCL 34-20B-118. Most hemp-derived THC on the market is made through a chemical conversion or extraction process, which means the South Dakota Legislature made it illegal to sell most THC products to any person of any age. *Id.* In that same vein, the Legislature prohibited the manufacture, distribution, possession, or sale of synthetic cannabinoids and named them Schedule I controlled substances. SDCL 34-20B-14(47); SDCL 22-42-2; SDCL 22-42-5. Similarly, THC products that contain any quantity of resin extracted from the cannabis plant, called "hashish and hash oil," are also considered Schedule I controlled substances. SDCL 34-20B-14(10). This Schedule I resin can also be used to make THC beverages and products.

CONCLUSION

Thus, I conclude the legality of the sale of THC-infused beverages cannot be answered without a reputable laboratory report as to the chemical makeup, properties, and content. The Legislature is tasked with specifying what derivatives and processes are outside the law, and as you can see in SDCL chs. 38-35, 34-20B, and 22-42, the complexities are many. The Legislature has determined it is currently illegal to sell all synthetic cannabinoids, to sell naturally-occurring cannabinoids with more than 0.3% Delta-9 THC, and to sell industrial hemp or industrial hemp products that contain chemically-derived, chemically-modified, or chemically-converted cannabinoids. For several products on the market, it remains unclear what hemp derivatives and concentrations they contain, how those derivatives were extracted, and how they were subsequently altered or prepared. The Legislature has the power to change statutes regarding these matters going forward.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/MWT/SLT/dd